

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE: BAIR HUGGER FORCED AIR MDL No.: 15-md-02666 (JNE/FLN)
WARMING PRODUCT LIABILITY
LITIGATION

This Document Relates To:

PRISCILLA RICHEY,

Civil Action No.: 17-CV-05323-JNE-DTS

Plaintiff,

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS

NOW COMES Plaintiff, Priscilla Richey, identified in Defendants' Motion to Dismiss for Failure to Comply with Pretrial Order No. 23 [Dkt. 1621], and by and through undersigned counsel submits this, her Response to Defendants' Motion to Dismiss, and would respectively show the Court the following:

FACTS

In November of 2015, Ms. Priscilla Richey contacted undersigned counsel regarding an infection and subsequent treatment that she experienced due to the use of a Bair Hugger patient warming device during an orthopedic surgery. Counsel worked to obtain medical records and billing records to move forward with the case. Those records indicated that a Bair Hugger device was used during the original surgery. On December 1, 2017, counsel filed the current action to comply with what was identified as the applicable statute of limitations deadline for the relevant claim.

Counsel was informed in early April by Ms. Richey's daughter-in-law that Ms. Richey had passed away. Plaintiff's Counsel filed a Suggestion of Death July 3, 2018. This Court ordered Plaintiff file a motion for substitution of plaintiff by November 17, 2018. [See Dkt. 1566]. Counsel has made numerous efforts to contact Ms. Richey's son Robert Richey since April 2018 to determine how he would like to proceed with the case. While counsel has diligently continued their attempts to contact Plaintiff's only son, those efforts have not been successful to date. As a result, counsel has not been able to obtain the necessary information to file a motion for substitution of plaintiff.

CONCLUSION

For the foregoing reasons, undersigned counsel respectfully requests that the Plaintiff's claims not be dismissed with prejudice pursuant to Pretrial Order 23 and an additional sixty (60) days be given for Counsel to contact Plaintiff's heirs to determine how to proceed with this matter and provide the necessary information to file a Motion for Substitution of Plaintiff.

Dated: December 13, 2018

KENNEDY HODGES, LLP

By: /s/ David W. Hodges
 David W. Hodges
 dhodges@kennedyhodges.com
 Gabriel A. Assaad
 gassaad@kennedyhodges.com
 4409 Montrose Blvd. Ste 200
 Houston, TX 77006
 Telephone: (713) 523-0001
 Facsimile: (713) 523-1116

ATTORNEYS FOR PLAINTIFF